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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> , f/k/a General Motors Corp., <i>et al.</i>	:	Case No.: 09-50026 (MG)
	:	
Debtors.	:	(Jointly Administered)
	x	

**APPELLANT'S STATEMENT OF ISSUES
TO BE PRESENTED ON APPEAL AND DESIGNATION
OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, General Motors LLC (“New GM”), as Appellant, submits this statement of the issues to be presented on appeal, and designation of items to be included in the record on appeal in connection with New GM’s Notice of Appeal [Dkt. No. 13996], filed on July 25, 2017, with respect to: (i) the *Memorandum Opinion And Order Granting In Part New GM’s Motion To Enforce Sale Order Against The Pitterman Plaintiffs and Resolving 2016 Threshold Issue Two: Whether Non-Ignition Switch Plaintiffs Are Barred From Asserting Independent Claims Against New GM*, entered by the

United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”) in the above-referenced case on June 7, 2017 (“June 2017 Opinion”) [Dkt. No. 13955]; and (ii) the *Order Granting In Part And Denying In Part General Motors LLC’s Motion To Enforce The Ruling In The Bankruptcy Court’s June 7, 2017 Opinion With Respect To The Pitterman Plaintiffs*, entered by the Bankruptcy Court on July 10, 2017 (“July 2017 Order”) [Dkt. No. 13991].

I. Statement of Issues to be Presented on Appeal

The issues to be presented on appeal are:

A. Whether the Bankruptcy Court erred in the June 2017 Opinion and July 2017 Order when it held that the Pitterman Plaintiffs could proceed with their failure to warn and failure to recall claims as Independent Claims,¹ even though, among other things, those claims, (a) were not based solely on New GM’s post-closing wrongful conduct (as required by *In the Matter of Motors Liquidation Co.*, 829 F.3d 135 (2d Cir. 2016); and (b) amounted to a disguised successor liability claim prohibited by the Sale Order and Injunction and other Bankruptcy Court rulings.

B. Whether the Bankruptcy Court (Judge Martin Glenn) erred in the June 2017 Opinion when it interpreted the Judgment entered by the Bankruptcy Court (Judge Robert Gerber) on December 4, 2015 [ECF No. 13563] (“December 2015 Judgment”) to only concern the ability of Ignition Switch Plaintiffs to bring Independent Claims, and not to concern the

¹ The term “Independent Claims” was defined by the Second Circuit as: “claims based on New GM’s own post-closing wrongful conduct. . . . These sorts of claims are based on New GM’s *post-petition* conduct, and are not claims that are based on a right to payment that arose before the filing of petition or that are based on pre-petition conduct.” *In the Matter of Motors Liquidation Co.*, 829 F.3d 135, 157 (2d Cir. 2016).

ability of plaintiffs whose claims arose with respect to Old GM vehicles without the Ignition Switch Defect to bring Independent Claims.²

C. Whether plaintiffs who are bound by the December 2015 Judgment, like the Pitterman Plaintiffs, whose claims arose with respect to Old GM vehicles without the Ignition Switch Defect, are barred by principles of *res judicata* (and similar legal doctrines) from asserting Independent Claims against New GM due to the final December 2015 Judgment with respect to that issue.

II. Designation of Items to be Included in Record on Appeal

New GM submits the following designation of items to be included in the record on appeal (including any exhibit, annex, appendix or addendum thereto):

<u>Item No.</u>	<u>Date Filed</u>	<u>Title</u>	<u>ECF No.</u>
1.	7/05/2009	Order (I) Authorizing Sale Of Assets Pursuant To Amended And Restated Master Sale And Purchase Agreement With NGMCO, Inc., A U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases In Connection With The Sale; And (III) Granting Related Relief	2968
2.	6/1/2015	Judgment Signed on 6/1/2015	13177
3.	8/19/2015	Case Management Order RE No-Strike, No-Stay, Objection, and GUC Trust Asset Pleadings	13383
4.	8/26/2015	Letter In Response to Case Management Order, dated August 19, 2015 Filed by Arthur Jay Steinberg on behalf of General Motors LLC	13390
5.	9/3/2015	Scheduling Order signed on 9/3/2015 regarding case management order re: no-strike, no stay, objection, and GUC trust asset pleading	13416
6.	9/10/2015	Certificate of Service	13428
7.	9/15/2015	Transcript regarding Hearing Held on 8/31/2015	13438

² The terms “Ignition Switch Plaintiffs” and “Ignition Switch Defect” were defined by the Bankruptcy Court in a subsequent, related opinion titled *Memorandum Opinion and Order Deciding Certain 2016 Threshold Issues*, dated July 12, 2017 [ECF No. 13992] (“July 2017 Opinion”). The July 2017 Opinion is published at *In re Motors Liquidation Co.*, Case No. 09-50026 (MG), 2017 WL 2963374 (Bankr. S.D.N.Y. July 12, 2017).

<u>Item No.</u>	<u>Date Filed</u>	<u>Title</u>	<u>ECF No.</u>
8.	12/4/2015	Judgment Signed on 12/4/2015 Regarding Decision Signed on 11/9/2015 on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues	13563
9.	12/15/2015	Notice of Appeal filed by Steve Berman on behalf of Ignition Switch Plaintiffs.	13567
10.	12/18/2015	Notice of Appeal filed by William P. Weintraub on behalf of Hilliard Munoz Gonzales LLP and Thomas J. Henry Injury Attorney.	13572
11.	12/28/2015	Joint Notice of Appeal filed by Gary Peller on behalf of Paul Fordham, Tynesia Mitchell, Dierra Thomas, Momoh Kanu, Tina Farmer, Sharon Bledsoe, Celestine Elliott, Lawrence Elliott.	13575
12.	12/28/2015	Statement of Issues Appellants' Statement of the Issues on Appeal And Designation of the Items to Be Included in the Record on Appeal	13576
13.	12/28/2015	Statement of Issues and Designation of Items [corrected] filed by Gary Peller on behalf of Gary Peller	13578
14.	12/30/2015	Statement of Issues / Adams Plaintiffs' Statement of Issues and Designation of Record on Appeal	13579
15.	6/24/2016	Motion to Authorize - Notice Of Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court's July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith, With Respect To Plaintiffs Identified On Schedule "1" Attached Thereto	13655
16.	6/24/2016	Statement - Compendium Of Exhibits For Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court's July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith, With Respect To Plaintiffs Identified On Schedule 1 Attached Thereto	13656
17.	7/08/2016	Opposition Brief to GM Motion to Enforce ECF 13655 filed by Joram Hirsch on behalf of Bernard Pitterman Adm.	13675
18.	7/13/2016	Reply to Motion - Reply by General Motors LLC to Objections And Response To Its' Motion Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court's July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith, With Respect To Plaintiffs Identified On Schedule "1" Attached Thereto	13681
19.	7/14/2016	Notice of Adjournment of Hearing - Notice Of Status Conference To Be Held In Connection With The June 2016 Motions To Enforce And Adjournment Of Hearing In Connection With Second June 2016 Motion To Enforce filed by Arthur Jay Steinberg on behalf of General Motors LLC. with hearing to be held on 7/18/2016 at 10:00 AM at Courtroom 523 (MG)	13684

<u>Item No.</u>	<u>Date Filed</u>	<u>Title</u>	<u>ECF No.</u>
20.	7/20/2016	Transcript regarding Hearing Held on 7/18/2016 10:04 AM RE: Status Conference Re: Motion by General Motors LLC Pursuant to 11 U.S.C 105 and 363 to Enforce the Bankruptcy Court's July 5, 2009 Sale Order and Injunction, and the Rulings in Connection Therewith	13697
21.	11/10/2016	Status Report Pursuant to the Court's Order Setting Case Management Conference for 11:30 a.m., November 16, 2016, entered on October 18, 2016 [Dkt. No. 13775]	13786
22.	11/17/2016	Transcript Regarding Hearing Held on 11/16/2016 RE: Case Management Conference	13796
23.	12/13/2016	Order to Show Cause Regarding Certain Issues Arising From Lawsuits with Claims Asserted Against General Motors ("New GM") That Involve Vehicles Manufactured by General Motors Corporation	13802
24.	2/27/2017	Statement /Benjamin W. Pillars Supplemental Opening Brief filed by Victor J. Mastromarco Jr. on behalf of Pillars, Estate of Kathleen Pillars, Deceased	13857
25.	2/27/2017	Statement Pilgrim Plaintiffs' Supplemental Opening Brief, filed by Brendan M. Scott on behalf of William D. Pilgrim, et al.	13859
26.	2/27/2017	Statement Supplemental Opening Brief of the Elliott, Sesay and Bledsoe Plaintiffs filed by Gary Peller on behalf of Momoh Kanu, Tynesia Mitchell, Ishmail Sesay	13861
27.	2/27/2017	Statement Supplemental Opening Brief on the 2016 Threshold Issues filed by Kris Ted Ledford on behalf of Christopher Pope, Gwendolyn Pope	13864
28.	2/27/2017	Memorandum of Law Opening Brief by General Motors LLC on the 2016 Threshold Issues Set Forth in the Order to Show Cause, Dated December 13, 2016 (Except for the Late Proof of Claim Issue)	13865
29.	2/27/2017	Memorandum of Law /Plaintiffs' Joint Opening Brief on the 2016 Threshold Issues (related document(s)13802) filed by Edward S. Weisfelner on behalf of Designated Counsel for the Ignition Switch Plaintiffs & Certain Non-Ignition Switch Plaintiffs	13866
30.	4/07/2017	Reply to Motion Reply Brief by General Motors LLC on the 2016 Threshold Issues Set Forth in the Order to Show Cause, Dated December 13, 2016 (Except for the Late Proof of Claim Issue)	13888
31.	4/07/2017	Response /Plaintiffs' Joint Reply Brief On The 2016 Threshold Issues by Edward S. Weisfelner on behalf of Designated Counsel for the Ignition Switch Plaintiffs & Certain Non-Ignition Switch Plaintiffs.	13889
32.	4/24/2017	Transcript Regarding Hearing Held on 4/20/2017 RE: Order To Show Cause	13907

<u>Item No.</u>	<u>Date Filed</u>	<u>Title</u>	<u>ECF No.</u>
33.	5/03/2017	Letter Regarding Update on Related Proceeding And the Impact of In re Tronox Inc. on the 2016 Threshold Issues Filed by Scott I. Davidson on behalf of General Motors LLC	13914
34.	5/04/2017	Memorandum Endorsed So Ordered Letter Signed on 5/4/2017. The request that letter briefs, not to exceed four (4) pages be filed on or before May 10, 2017, to address the impact, if any, of the Tronox Opinion on 2016 Threshold Issue No. 2, as it relates to Independent Claims, is GRANTED	13918
35.	5/05/2017	Letter Brief Correcting Statements Made by Plaintiffs' Counsel at Hearing on 2016 Threshold Issues Filed by Arthur Jay Steinberg on behalf of General Motors LLC	13921
36.	5/08/2017	Letter Providing Supplemental Authority in Connection with New GM's Motion to Enforce with Respect to the Pitterman Lawsuit Filed by Arthur Jay Steinberg on behalf of General Motors LLC	13923
37.	5/10/2017	Letter Regarding the Impact of In re Tronox Inc. on 2016 Threshold Issue No. 2 as it Relates to Independent Claims Filed by Arthur Jay Steinberg on behalf of General Motors LLC	13929
38.	5/10/2017	Letter /Joint letter Regarding the Impact of In re Tronox Inc. on 2016 Threshold Issue No. 2 as it Relates to Independent Claims Filed by Edward S. Weisfelner on behalf of Designated Counsel for the Ignition Switch Plaintiffs & Certain Non-Ignition Switch Plaintiffs	13930
39.	5/12/2017	Response to May 5, 2017 Letter from Counsel to New GM filed by William P. Weintraub on behalf of Hilliard Munoz Gonzales L.L.P., Denney & Barrett, P.C., Burnett Law Firm, Turner & Associates, P.A	13935
40.	5/15/2017	Letter Response to GM letter May 8 Filed by Joram Hirsch on behalf of Bernard Pitterman Adm.	13937
41.	5/15/2017	Letter from Arthur J. Steinberg to Honorable Martin Glenn dated 5/15/2017 re List of Cases with Upcoming Trial Dates	13938
42.	5/19/2017	Transcript regarding Hearing Held on 5/17/2017 RE: Hearing Re: Order To Show Cause In Reference To Threshold Issue	13943
43.	6/07/2017	Memorandum Opinion and Order, Signed on 6/7/2017, Granting in Part New GM's Motion to Enforce Sale Order Against the Pitterman Plaintiffs and Resolving 2016 Threshold Issue Two: Whether Non-Ignition Switch Plaintiffs are Barred from Asserting Independent Claims Against New GM	13959
44.	6/20/2017	Motion by General Motors LLC to Enforce the Rulings in the Bankruptcy Court's June 7, 2017 Opinion and Order With Respect to the Pitterman Plaintiffs	13965
45.	6/20/2017	Declaration of Arthur Steinberg in Support of General Motors LLC's Motion to Enforce the Rulings in the Bankruptcy Courts June 7, 2017 Opinion and Order with Respect to the Pitterman Plaintiffs	13966

<u>Item No.</u>	<u>Date Filed</u>	<u>Title</u>	<u>ECF No.</u>
46.	6/21/2017	Order to Show Cause Fixing a Date and Time for the Hearing on the Motion by General Motors LLC to Enforce the Rulings in the Bankruptcy Court's June 7, 2017 Opinion and Order With Respect to the Pitterman Plaintiffs	13969
47.	6/27/2017	Opposition Brief Objection to GM Motion to Enforce ECF 13969 filed by Joram Hirsch on behalf of Bernard Pitterman Adm.	13972
48.	6/29/2017	Reply to Motion by General Motors LLC to Opposition by the Pitterman Plaintiffs to Motion to Enforce the Pitterman Opinion	13977
49.	6/30/2017	Transcript regarding Hearing Held on 6/29/2017 RE: Order To Show Cause	13984
50.	7/10/2017	Order Granting In Part And Denying In Part General Motors LLC's Motion To Enforce The Ruling In The Bankruptcy Court's June 7, 2017 Opinion With Respect To The Pitterman Plaintiffs	13991
51.	7/25/2017	Notice of Appeal by New GM of (i) Memorandum Opinion and Order Granting in Part New GMs Motion to Enforce Sale Order Against the Pitterman Plaintiffs and Resolving 2016 Threshold Issue Two: Whether Non-Ignition Switch Plaintiffs are Barred from Asserting Independent Claims Against New CM; and (ii) the Order Granting In Part And Denying In Part General Motors LLCs Motion To Enforce The Ruling In The Bankruptcy Courts June 7, 2017 Opinion With Respect To The Pitterman Plaintiffs	13996

Dated: New York, New York

August 8, 2017

Respectfully submitted,

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